

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U 338-E) for Order Approving Contracts to Secure Additional Capacity for System Reliability in SP-15.

Application 05-06-003
(Filed June 2, 2005)

**OPINION GRANTING INTERVENOR COMPENSATION
TO AGLET CONSUMER ALLIANCE FOR
SUBSTANTIAL CONTRIBUTIONS TO DECISION 06-01-004 AND
RELATED PARTICIPATION IN THE PROCUREMENT REVIEW GROUP**

This decision awards Aglet Consumer Alliance (Aglet) \$18,021.27 in compensation for its substantial contributions to Decision (D.) 06-01-004 and its related participation in the Procurement Review Group (PRG) for Southern California Edison Company (SCE). The award is a decrease of \$4,432.50 from the amount requested. This proceeding is closed.

1. Background

D.06-01-004 granted SCE's motion to withdraw the application that commenced this proceeding. As filed, the application proposed that SCE acquire up to 1,500 megawatts (MW) of capacity through new power purchase agreements to serve the southern California region known as "South of Path-15" (SP-15). The application sought Commission authorization to allocate two-thirds of the power contracts, together with costs, to SCE's bundled customers, and the remainder to all other electricity customers in SP-15. The Assigned Commissioner's scoping memo authorized review of SCE's acquisition of

1,000 MW, only – the amount of power needed to satisfy SCE’s long-term procurement plan. SCE declined to go forward on that basis.

Aglet participated in SCE’s PRG, which was established to review SCE’s proposals, such as these power contracts, to implement its long-term procurement plan. In D.02-10-062, the Commission determined that intervenors participating in utility PRGs, together with related review of advice letters and applications, should be eligible for an award of intervenor compensation.

2. Requirements for Awards of Compensation

The intervenor compensation program, enacted in Pub. Util. Code §§ 1801-1812, requires California jurisdictional utilities to pay the reasonable costs of an intervenor’s participation if the intervenor makes a substantial contribution to the Commission’s proceedings. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers. (Subsequent statutory references are to the Public Utilities Code unless otherwise indicated.)

All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (PHC), or in special circumstances at other appropriate times that we specify. (§ 1804(a).)
2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
3. The intervenor should file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)

4. The intervenor must demonstrate “significant financial hardship.” (§§ 1802(g), 1804(b)(1).)
5. The intervenor’s presentation must have made a “substantial contribution” to the proceeding, through the adoption, in whole or in part, of the intervenor’s contention or recommendations by a Commission order or decision. (§§ 1802(i), 1803(a).)
6. The claimed fees and costs are reasonable (§ 1801), necessary for and related to the substantial contribution (D.98-04-059), comparable to the market rates paid to others with comparable training and experience (§ 1806), and productive (D.98-04-059).

For discussion here, the procedural issues in Items 1-4 above are combined, followed by separate discussions of Items 5-6.

3. Procedural Issues

Aglet timely filed its NOI on September 1, 2005, within 30 days of the PHC on August 2, 2005.

Aglet’s Articles of Incorporation and Bylaws authorize this non-profit corporation to represent and advocate the interests of residential and small commercial customers of electrical, gas, water and telephone utilities in California. Aglet reports, moreover, that all of its members are residential utility customers and that approximately 30% also operate small businesses with separate energy or telephone services. The authorization in Aglet’s Articles and Bylaws meets the statutory requirements for customer status under subparagraph C of § 1802(b)(1) and we find that Aglet is a customer, consistent with prior Commission determinations on this issue.

An intervenor seeking compensation must show that, without undue hardship, it cannot pay the reasonable costs of effective participation in the proceeding. In the case of groups or organizations defined as customers under subparagraph C of § 1802(b)(1), significant financial hardship is demonstrated by

showing that the economic interest of individual members is small compared to the overall costs of effective participation. (Pub. Util. Code § 1802(g).) Aglet meets the requirement for financial hardship through a rebuttable presumption of eligibility, pursuant to § 1804(b)(1), because Aglet met this requirement in another proceeding within one year of the commencement of this proceeding (Administrative Law Judge Ruling dated August 3, 2004, in Application (A.) 04-05-021). Aglet filed its request for compensation on March 14, 2006, within 60 days of D.06-01-004 being issued. In view of the above, we find that Aglet has satisfied all the procedural requirements necessary to make its request for compensation. No party opposes the request.

4. Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding, we look at several things. First, did the Administrative Law Judge (ALJ) or Commission adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer? (See § 1802(i).) Second, if the customer's contentions or recommendations paralleled those of another party, did the customer's participation materially supplement, complement, or contribute to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision? (See §§ 1802(i) and 1802.5.) As described in § 1802(i), the assessment of whether the customer made a substantial contribution requires the exercise of judgment.

In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it

contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.¹

Should the Commission not adopt any of the customer's recommendations, compensation may be awarded if, in the judgment of the Commission, the customer's participation substantially contributed to the decision or order. For example, if a customer provided a unique perspective that enriched the Commission's deliberations and the record, the Commission could find that the customer made a substantial contribution. With this guidance in mind, we turn to the claimed contributions Aglet made to this proceeding.

Aglet advanced its view of SCE's application in its PHC statement and in the subsequent comments filed in response to questions posed by the Assigned Commissioner's scoping memo. Aglet claims that it contributed to two influential determinations, which narrowed the issues for further review: "limiting the scope of the application to acquisition of new generation to serve SCE's own customers; and the appropriate sharing of costs for new generation." (Request, p. 2.) These determinations contributed to SCE's decision to withdraw the application, which D.06-01-004 granted. Aglet's positions were consonant with both the end result and the rationale for that result.

As Aglet argues, in D.02-08-061 the Commission awarded intervenor compensation to The Utility Reform Network (TURN) for its participation in the early stages of a proceeding that was closed soon thereafter, for reasons beyond TURN's control. The Commission reasoned that to do otherwise would be unfair, inconsistent with the intent of the intervenor compensation statutes, and

¹ D.98-04-059, 79 CPUC2d, 628 at 653.

either discourage future participation or create an inappropriate incentive for intervenors to champion continued litigation.

For these reasons, we find that Aglet made a substantial contribution to D.06-01-004. Aglet was not alone in challenging SCE's application, so we are obliged to consider whether Aglet supplemented, complemented, or contributed to the showings of other parties advancing similar views. Substantively, Aglet's filings were more than a "me too" or a "place holder" for its subsequent participation; the filings provided useful, substantive articulation of its initial views, and thereby supplemented the preliminary record. Under the circumstances present here, we find no reduction should be made for duplication, and we proceed to consider the reasonableness of Aglet's request.

5. Reasonableness of Requested Compensation

Aglet requests \$22,453.77 in intervenor compensation, \$13,612.65 attributable to its participation in this proceeding and \$8,841.12 attributable to its related participation in SCE's PRG. Aglet claims reimbursement for time spent by its Executive Director, James Weil, and by its consultant, Jan Reid, and for the direct expenses of their participation, as follows:

A.05-06-003

James Weil, professional time, 2005	10.5 hrs. @ \$250/hr.	\$ 2,625.00
James Weil, travel & compensation, 2005 & 2006	13.6 hrs. @ \$125/hr.	\$ 1,700.00
Jan Reid, professional time 2005	42.6 hrs. @ \$200/hr.	\$ 8,520.00
Jan Reid, travel & compensation, 2005 & 2006	5.3 hrs. @ \$100/hr.	\$ 530.00
Weil's travel expenses		\$ 78.92
Reid's travel expenses		\$ 77.24
Copies		\$ 28.23
Postage, Overnight Delivery		\$ 53.26
Total Compensation Request		\$13,612.65

SCE's PRG

Jan Reid, professional time 2005	38.9 hrs. @ \$200/hr.	\$ 7,780.00
Jan Reid, travel & compensation	9.0 hrs. @ \$100/hr.	\$ 900.00
Reid's travel expenses		\$ 161.12
Total Compensation Request		\$ 8,841.12

In general, the components of this request must constitute reasonable fees and costs of the customer's preparation for and participation in a proceeding that resulted in a substantial contribution. The issues we consider to determine reasonableness are discussed below.

5.1 Hours and Costs Related to and Necessary for Substantial Contribution

We first assess whether the hours claimed are reasonable by determining to what degree the hours and costs are related to the work performed and necessary for the substantial contribution.

Aglet documented its claimed hours by including a daily breakout of the hours for Weil and Reid in its request. The breakout indicates that Weil edited Reid's work products, attended the PHC, and prepared the NOI and compensation request. Reid drafted Aglet's discovery requests, PHC statement

and the post-PHC comments. Aglet's breakout reasonably supports the claim for total hours and shows travel and request preparation-related time billed at one-half the hourly rate. Most of the time billed at this reduced rate was for travel.

Since we found that Aglet's efforts made a substantial contribution to D.06-01-004, we do not exclude any of this time from the calculation of its award. We recognize that because the proceeding was closed before the distribution of prepared testimony, issue prioritization was not possible. Aglet allocated its time as follows: 5.9 hours to general work (initial review and attendance at PHC); and 23.6 hours, each, to scope of review and cost allocation.

Because SCE's PRG is ongoing, and requests for PRG-related compensation may be filed in different dockets, it is important that the Commission be able to compare future requests against prior awards. Therefore, if Aglet files additional claims for compensation for its participation in the PRG, it should distinguish today's award (and any other PRG awards) clearly from its future requests by listing all prior awards and the time periods associated with them.

5.2 Market Rate Standard

We next take into consideration whether the claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services.

Aglet requests an hourly rate for Weil of \$250 per hour for work performed in 2005 and 2006, including one-half of that rate for travel time and time devoted to preparation of compensation documents. We previously approved this rate, in D.04-12-039 and subsequent decisions, for work performed in 2004 and adopt it here. Consistent with D.05-11-031, Aglet does not seek an increase for 2005 or 2006 in this request.

For Reid, Aglet asks the Commission to establish an hourly rate of \$200 per hour for work in 2005 and 2006. This is one of the first requests for approval of an hourly rate for Reid. In support, Aglet submits that Reid holds a Business Administration degree in economics and a Master of Science degree in applied economics and finance, both from the University of California, Santa Cruz. The subject of Reid's master's thesis was the capital asset pricing model, a standard financial model that is regularly used in the Commission's return on equity proceedings. Reid was employed at the Commission for more than seven years and appeared as an expert witness for the Division of Ratepayer Advocates on policy and technical issues relating to utility finance, cost of capital, Pacific Gas and Electric Company's bankruptcy and electric procurement.

For experts for whom no rates have been established previously, D.05-11-031 directs that hourly rates be set within an adopted range of \$110 to \$360. The exact rate is determined by comparing the training and experience of an individual as compared to peers. Here, we compare Reid's qualifications to the qualifications of other experts whose rates previously have been established.

Aglet asserts the requested hourly rate for Reid matches the hourly rate that the Commission approved for Weil after he retired from the Commission in 1997, and is lower than the 2002 hourly rate the Commission approved for Ray Czahar, another former Commission employee. However, Aglet does not assert that Weil and Czahar should be considered as Reid's professional peers nor does it compare Reid's training and experience to that of Weil or Czahar. Aglet does identify David Purkey, Bill Trush, Sandra McDonald, Michael McDonald, John Gamboa and Michael Phillips as Reid's peers, and their hourly rates, established in D.04-08-025, are either consistent with or higher than the hourly rate Aglet requests for Reid. Again, other than stating that Reid's requested hourly rate is

consistent with rates approved for these other expert witnesses, and that Reid has more experience testifying before the Commission, Aglet does not provide any comparison of Reid's training or experience to these other experts.

Purkey and Trush both were awarded a \$200 hourly rate in D.04-08-025 for 2002 work. Both earned BA and MS degrees but unlike Reid, they also earned PhDs and their experience as scientists exceeds the experience of Reid. Both Sandra and Michael McDonald, Gamboa and Phillips also have more extensive experience than Reid. Gamboa and Phillips also have more extensive experience testifying before this Commission.² We find that Aglet has not demonstrated that Reid's training and experience is comparable to that of these experts, and that their previously authorized hourly rates should not be used as a benchmark to establish an hourly rate for Reid.

We look to recent compensation awards that establish an initial hourly rate to find an intervenor with training and experience similar to Reid's. In D.06-04-022, John Galloway was awarded a \$120 hourly rate for his work in 2005. Galloway and Reid earned a BA and MBA and previously worked for the Commission. Galloway had five years experience with the Commission compared to Reid's seven years. Galloway had two years prior experience with a regulated telecommunications carrier, while Reid had five years prior experience consulting on computer hardware and software applications. Though their training and experience are similar, Reid has additional time at the Commission and also testifying experience.

² See, for example, D.97-03-067, D.99-04-023, D.01-09-011, D.03-03-022, D.03-04-050, D.03-10-062, D.03-11-021, and D.04-08-025.

In view of the above, we adopt a rate of \$150 per hour for Reid for 2005 and 2006.

5.3 Productivity

D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the ratepayer benefit of their participation. The costs of a customer's participation should bear a reasonable relationship to the benefits realized. This showing assists us in determining the overall reasonableness of the request. However, recognizing that some benefits are not readily quantifiable, the Commission has applied this requirement with discretion.

Aglet states that the value of its contributions to D.06-01-004 cannot be readily translated into a monetary benefit to ratepayers. According to Aglet, withdrawal of the application has reduced the risk that customers of other load-serving entities (such as San Diego Gas & Electric Company) "will absorb contract cost but will not receive benefits. With hundreds of millions of dollars of procurement costs at stake, allowing Aglet a fraction of the credit for such an outcome would result in benefits that exceed Aglet's small compensation request." (Request, p. 5.) We find Aglet's productivity argument reasonable and make no reductions to its award in that regard.

5.4 Direct Expenses

Aglet requests reimbursement of direct costs of \$237.65 and \$161.12, respectively, for its contributions to D.06-01-004, and the PRG. The expenses total \$398.77. The request itemizes these charges by date incurred, including the parking and bridge fees, mileage allowance, and delivery and photocopy charges. We find these costs reasonable and commensurate with the work performed.

6. Award

As set forth in the table below, we award Aglet \$18,021.27 and direct SCE to pay the award:

A.05-06-003 & related PRG

James Weil, professional time, 2005	10.5 hrs. @ \$250/hr.	\$ 2,625.00
James Weil, travel & compensation, 2005 & 2006	13.6 hrs. @ \$125/hr.	\$ 1,700.00
Jan Reid, professional time 2005	81.5 hrs. @ \$150/hr.	\$12,225.00
Jan Reid, travel & compensation, 2005 & 2006	14.3 hrs. @ \$ 75/hr.	\$ 1,072.50
Direct expenses		<u>\$ 398.77</u>
Total Compensation Award		\$18,021.27

Consistent with previous Commission decisions, we order that interest be paid on the award (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing on May 18, 2006, the 75th day after Aglet filed its compensation request, and continuing until full payment of the award is made.

We remind Aglet that Commission staff may audit its records related to this award and that Aglet must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Aglet's records should identify specific issues for which it requested compensation, the actual time spent by each employee or consultant, the applicable hourly rate, fees paid to its consultant, and any other costs for which compensation was claimed.

7. Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

8. Assignment of Proceeding

Dian M. Grueneich is the Assigned Commissioner and Jean Vieth is the assigned ALJ in this proceeding.

Findings of Fact

1. Aglet has satisfied all the procedural requirements necessary to claim compensation in this proceeding and its related participation in SCE's PRG.
2. Aglet made substantial contributions to D.06-01-004 and SCE's PRG, as described herein.
3. Aglet requested hourly rates for its representatives that, as adjusted herein, are reasonable when compared to the market rates for persons with similar training and experience.
4. Aglet requested related expenses that are reasonable and commensurate with the work performed.
5. The total of the reasonable compensation for Aglet is \$18,021.27.
6. The appendix to this opinion summarizes today's award.
7. Because SCE's PRG is ongoing, and requests for PRG-related compensation may be filed in different dockets, Aglet should ensure that any future intervenor compensation requests for its PRG participation report all prior awards and the associated time period.

Conclusions of Law

1. Aglet has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed compensation, as adjusted herein, incurred in making substantial contributions to D.6-01-004 and SCE's PRG.
2. Aglet should be awarded \$18,021.27 for its contributions to D.06-01-004 and SCE's PRG.

3. Per Rule 77.7(f)(6), the comment period for this compensation decision may be waived.

4. This order should be effective today so that Aglet may be compensated without further delay.

O R D E R

IT IS ORDERED that:

1. Aglet Consumer Alliance (Aglet) is awarded \$18,021.27 as compensation for substantial contributions to Decision 06-01-004 and its related participation in the Procurement Review Group (PRG) for Southern California Edison Company (SCE).

2. Within 30 days of the effective date of this decision, SCE shall pay the award, including interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15. Interest on the award shall be calculated beginning on May 18, 2006, the 75th day after the filing date of Aglet's request for compensation, and continuing until full payment is made.

3. The comment period for today's decision is waived.

4. In any future requests for compensation for its participation in SCE's PRG, Aglet shall list all prior PRG-related awards and the time periods associated with them, in order to ensure proper tracking across disparate dockets.

5. Application 05-06-003 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX

Compensation Decision Summary Information

Compensation Decision:		Modifies Decision? No
Contribution Decision(s):	D0601004	
Proceeding(s):	A0506003	
Author:	ALJ Vieth	
Payer(s):	Southern California Edison Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Aglet Consumer Alliance	March 14, 2006	\$22,453.77	\$18,021.27	N/A	failure to justify hourly rate

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
James	Weil	Policy Expert	Aglet Consumer Alliance	\$250	2005	\$250
James	Weil	Policy Expert	Aglet Consumer Alliance	\$250	2006	\$250
Jan	Reid	Analyst/ Consultant	Aglet Consumer Alliance	\$200	2005	\$150
Jan	Reid	Analyst/ Consultant	Aglet Consumer Alliance	\$200	2005	\$150

(END OF APPENDIX)